or the absolute grant of land so situated that egress necessitates a way over the grantor's land.[14]

By a novel extension of these principles, a recent case decided that where an offer had been made in writing and an acceptance, also in writing, had been made more than a reasonable time thereafter, parol evidence of an agreement by the offeror to continue the offer was not admissible. *Standard Box Co.* v. *Mutual Biscuit Co.*, 103 Pac. 938 (Cal.). The soundness of the extension may be doubted, for the contract of the parties may well have been concluded by the written acceptance of the parol offer, the latter incorporating the terms of the earlier written offer.

RECENT CASES.

ACCOUNT — DUTY TO ACCOUNT — REQUISITE FIDUCIARY RELATION NOT ESTABLISHED BY CONTRACT. — In consideration of a royalty equivalent to 25 per cent of the net profits of the business as continued by the defendants, the plaintiff sold his business to them together with an exclusive license for the use of his trademarks for a limited period. The defendants thereafter created the B. company to exploit a cheaper grade of perfumery, not bearing the plaintiff's trademarks. The plaintiff sought an accounting of the B. company's business. *Held*, that the plaintiff has no remedy in equity. *Thompson* v. *Crown Perfumery Company & Batcheller Importing Company*, 42 N. Y. L. J. 845 (N. Y. App. D., Nov., 1909).

The plaintiff contended that the relation of the parties was that of *quasi*-partners, in which case the right to an accounting exists. *Marston* v. *Gould*, 69 N. Y. 220. And he alleged that such fiduciary relationship precluded the defendants from conducting any rival business, so that they were liable to account for the same. *Somerville* v. *Mackay*, 16 Ves. 382. It is clear that where there is a fiduciary relationship, equity will compel an accounting. *Harvey* v. *Sellers*, 115 Fed. 757. Otherwise, equity will not interfere. *Foley* v. *Hill*, 2 H. L. Cas. 28. The authorities, however, do not support the plaintiff's contention that a fiduciary relationship existed. If the defendants had agreed to pay over 25 per cent of the net profits as such, they would have become liable as *quasi*-trustees of a specific fund. *Pratt* v. *Tuttle*, 136 Mass. 233. On the other hand, an obligation to pay by way of royalty gives no ground for an account. *Moxon* v. *Bright*, L. R. 4 Ch. 292. And where the profits are merely designated as a measure by which to determine compensation, there is no fiduciary relation. See *Bradley* v. *Wolff*, 40 N. Y. Misc. 592. The plaintiff got no legal interest in the profits. His action was merely one upon a contract to recover royalties, and should have been brought at law. *Preston* v. *Smith*, 156 Ill. 359. The fact that a statement of an account between him and the defendants was necessary to establish his claim, did not require equitable action. *Smith* v. *Bodine*, 74 N. Y. 30.

AGENCY — PRINCIPAL'S LIABILITY TO THIRD PERSONS IN TORT — INJURIOUS FALSEHOOD BY AGENT. — The plaintiff's declaration alleged that salesmen of the defendant "while acting in the scope of their authority as such salesmen" made false statements about the plaintiff, intending to cause and actually causing damage to the plaintiff's business. *Held*, that the declaration states no cause

[14] Isett *v.* Lucas, 17 Iowa 503; Lebus *v.* Boston, 107 Ky. 98, takes an opposite view, but can be explained on the ground that really the oral agreement to release an existing way proved that the situation did not call for the imposition of a way of necessity.

of action against the defendant. *Duquesne Distributing Co.* v. *Greenbaum*, 121 S. W. 1026 (Ky.).

The rule that a master is liable for all torts committed by his servants in the scope of their authority, and in the course of the master's business, is applied to deceit and libel. See *Barwick* v. *English Joint Stock Bank*, L. R. 2 Exch. 259; *Citizens Life Assurance Co.* v. *Brown*, [1904] A. C. 423. But in cases of slander it has sometimes been denied. *Behre* v. *National Cash Register Co.*, 100 Ga. 213; *Singer Mfg. Co.* v. *Taylor*, 150 Ala. 574. In the principal case, the court treats the injurious falsehood as slander, and goes on the theory that, as the speaking of defamatory words is peculiarly subject to temporary emotions, as to which a master cannot control his servants, he should not be liable unless he authorizes or ratifies the slander itself. But this same theory would frequently be applicable to the falsehoods of deceit and libel. Moreover, an employee who, prompted entirely by personal motives or passions, utters slander, thereby departs from the scope of his authority. See *Sawyer* v. *R. R.*, 142 N. C. 1. Accordingly, few slanders by an agent will come within even the usual limits of the rule of *respondeat superior;* and the better view applies to oral defamation the same test for vicarious liability as to other torts. *Rivers* v. *Yazoo & Miss. R. R. Co.*, 90 Miss. 196; *Hypes* v. *Southern Ry. Co.*, 82 S. C. 315.

BANKRUPTCY — DISCHARGE — OBTAINING PROPERTY BY FALSE STATEMENT IN WRITING. — More than four months before the institution of bankruptcy proceedings, a bankrupt made a false statement in writing by which he obtained property on credit within four months of the institution of such proceedings. *Held*, that he is not entitled to a discharge. *In re Terens*, 172 Fed. 938 (Dist. Ct., E. D. Wis.).

Section 14 b of the Bankruptcy Act of 1898, as amended in 1903, provides that a bankrupt's application for a discharge will be denied if he has obtained property on credit from any person upon a materially false statement in writing. Although no specific time was fixed by the statute, within which such statement must be made, yet by analogy with other provisions of the act, it has been suggested that the statement must be made within the four months' period. See BRANDENBURG, BANKRUPTCY, 3 ed., § 370. The principal case seems correct in reaching a different conclusion, for the language of the statute is not ambiguous, and an unintentional omission should not be presumed, since the next sub-section, making concealment of assets, etc., a cause for refusing a discharge, expressly mentions the time within which such an act must be done to prevent a discharge.

BANKRUPTCY — PREFERENCES — LIEN ON EXEMPT PROPERTY. — Within four months of the making of a chattel mortgage, the mortgagor was adjudicated bankrupt. The mortgagee, though surrendering the mortgage as a preference, asserted a lien on certain property included in the mortgage. This was claimed by the bankrupt as exempt. The mortgagee then proved his whole claim against the bankrupt's estate; whereupon the bankrupt asked that the exemption in question be set apart. *Held*, that he may have this property free from any claim by the mortgagee. *In re Soper*, 173 Fed. 116 (Dist. Ct., D. Neb.).

Since exempt property is not subject to creditors' demands, its transfer is not a preference. See *Mills* v. *J. H. Fisher & Co.*, 159 Fed. 897. *Cf. Bloedorn* v. *Jewell*, 34 Neb. 649. And the title to exempt property does not pass to the trustee, but remains in the bankrupt. BANKRUPTCY ACT OF 1898, § 70 *a; Lockwood* v. *Exchange Bank*, 190 U. S. 294. In Nebraska, a mortgagor of chattels retains title, and the mortgagee has only a lien. *Drummond Carriage Co.* v. *Mills*, 54 Neb. 417. And a lienee may surrender part of his security and retain the rest. *Palmer* v. *Tucker*, 45 Me. 316. So it appears that the lien asserted against the exempt property belonging to the bankrupt was not a preference, and persisted after the surrender of the mortgage. But secured creditors' claims are allowed only for the sum owing above the value of the securities. BANKRUPTCY ACT OF